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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,982	10/15/2003	Richard D. New	34822-00002USP1	7090

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EXAMINER	
HAN, JASON	
ART UNIT	**PAPER NUMBER**
2875	

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	**Application No.** 10/685,982	**Applicant(s)** NEW ET AL.
	Examiner Jason M. Han	**Art Unit** 2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 September 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-6,20-26 and 31-38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-6,20-26 and 31-38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see Page 9, filed September 19, 2006, with respect to the objection of claims have been fully considered and are persuasive. The objection of claims has been withdrawn.

2. Applicant's arguments with respect to Claims 1, 3-6, 20-26, and 31-38 have been considered but are moot in view of the new ground(s) of rejection.

3. It should be noted that the prior art to Quin (U.S. Patent 3,103,156) and Krashkevich (U.S. Patent 5,234,871) remains commensurate to the scope of the claims as broadly interpreted by the Examiner and as stated by the Applicant within the context of the claim language, which is elucidated and recapitulated in the rejection below.

4. In response to Applicant's arguments concerning Claims 20 and 31, "Applicant claims an infrared filter layer, a protective layer and a peripheral gasket surrounding the flat panel cover which blocks infrared light leakage along a peripheral edge when the cover is installed in the lighting fixture. There is no teaching or suggestion in Quin for the claimed peripheral gasket. In fact, the Quin frame 23 structure is shown in Figure 1 to allow for a gap 52 in the periphery of the cover which would allow for air circulation (col. 4, line 57). Such an air gap would clearly allow light to escape and thus the frame cannot meet the claimed peripheral gasket". (Page 10), the prior art to Quin remains commensurate to the limitations identified above. While it may be true that the frame/gasket 23 of Quin allows for air circulation and may allow for some light to escape, it still remains commensurate to the scope of the claim language due to the fact

that the peripheral frame/gasket does surround the flat panel cover and would block, whether efficiently or not, infrared light leakage along a peripheral edge when the cover is installed in the lighting fixture.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-11, 20-26, and 31-41 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-27 of U.S. Patent No. 6,515,413 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because both commonly recite the same essential structural limitations to an infrared filter system for fluorescent lighting (please note the independent claim comparison chart below), with the exception that the present application further modifies and applies the filter system (with the addition of a

protection layer) to a cover for a lighting fixture rather than a lamp tube/envelope. It would have been obvious to one ordinarily skilled to apply the cover with optical layers of the lamp tube to a lighting fixture cover.

6. Claims 1-11, 20-26, and 31-41 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-12 of U.S. Patent No. 6,741,024 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because both commonly recite the same essential structural limitations to an infrared filter system for fluorescent lighting (please note the independent claim comparison chart below), with the exception that the present application further modifies and applies the filter system (with the addition of a protection layer) to a cover for a lighting fixture rather than a lamp tube/envelope. It would have been obvious to one ordinarily skilled to apply the cover with optical layers of the lamp tube to a lighting fixture cover.

Independent Claim Comparison Chart:

Current Application: 10/685,982	**U.S. Patent 6,515,413 B1**	**U.S. Patent 6,741,024 B2**
Independent Claim 1	Independent Claims 1, 13, 19	Independent Claim 1
Independent Claim 7	Independent Claims 1, 13, 19	Independent Claim 1
Independent Claim 31	Independent Claims 1, 13, 19	Independent Claim 1
Independent Claim 39	Independent Claims 1, 13, 19	Independent Claim 1

The following rejected claims have been construed in light of the specification, but rendered the broadest interpretation as stated by the Applicant within the context of the claim language [MPEP 2111].

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 31 is rejected under 35 U.S.C. 102(b) as being anticipated by Quin (U.S. Patent 3,103,156).

Quin discloses a cover for a fluorescent lighting fixture having at least one fluorescent light emitter including:

- A flat panel [Figure 8] sized and shaped to fit within the fluorescent light fixture and further including:
    - = An infrared filter layer [Figure 8: (58)] for substantially preventing emission of infrared light from the fluorescent lighting fixture; and
    - = A protective layer [Figures 1-7: (22); Figure 8: (22a)] that prevents damage to the infrared filter layer; and

= A peripheral gasket/frame [Figures 1-4, 11: (23)] surrounding the flat panel cover which blocks infrared light leakage along a peripheral edge when the cover is installed in the lighting fixture.

Claim Rejections - 35 USC § 103

8. Claims 1, 3-6, and 20-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quin (U.S. Patent 3,103,156) in view of Krashkevich (U.S. Patent 5,234,871).

9. With regard to Claims 1 and 3-5, Quin discloses a cover for a fluorescent lighting fixture having at least one fluorescent light emitter, the cover including:

- An infrared filter [Figure 8: (58)] for substantially preventing emission of infrared light from the fluorescent lighting fixture; and
- A protective layer [Figures 1-7: (22); Figure 8: (22a)] that prevents damage to the infrared filter.

Quin discloses the claimed invention as cited above, but does not specifically teach a color filter for filtering a color of light from the fluorescent lighting fixture (re: Claim 1), the color filter being a green filter layer (re: Claim 3), the infrared filter being Night Vision Imaging Systems Green A-compatible (re: Claim 4) or Night Vision Imaging Systems Green B-compatible (re: Claim 5).

Krashkevich teaches glasses for use as filters for infrared and other wavelengths, as well as being NVIS Green A, B, or yellow compatible [Figure 7], and discloses, "Suprisingly, the glasses of the invention possess excellent photopic transmission, on the order of 10% or greater at full rated voltage (i.e., at a color temperature of 2100-

2150K) for Green A, and about 8-10% or greater for Green B, despite the inclusion of vanadium along with copper in the composition. Copper attenuates the near infrared red region by virtue of its broad ban infrared absorption, as well as visually coloring the glass blue. The addition of vanadium produces visible region absorptions which bias the chromaticity toward the green and aid in 600-650 nm region attenuation" [Column 3, Lines 14-25].

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the cover of Quin to incorporate the glass filters of Krashkevich in producing a color (e.g., green) to increase aesthetics during night time use, as well as to incorporate the NVIS Green A, B, or yellow compatibility, as taught by Krashkevich, in order to facilitate night vision devices within aircraft [see Krashkevich: Column 1, Lines 8-30].

10. With regards to Claim 6, Quin in view of Krashkevich discloses the claimed invention as cited above. In addition, Quin teaches the infrared filter including opposing surfaces/sides [Figure 8: (58)], wherein the protective layer [Figure 8: (22a)] is adjacent to one of the surfaces.

Though Quin in view of Krashkevich does not specifically teach the protective layer including a first protective layer positioned near one of the opposing sides and a second protective layer positioned near another one of the opposing sides, it would have been obvious to one ordinarily skilled in the art at the time of invention to duplicate the protective layers on both sides of the of the infrared filter, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. In this case, providing a lens/protective layer on both sides of the infrared filter layer would provide for greater protection.

11. With regards to Claim 20, Quin in view of Krashkevich discloses the claimed invention as cited above. In addition, Quin teaches a gasket/frame member [Figures 1-4, 11: (23)] for housing the cover, which would inherently block some infrared light leakage along the peripheral edge when the cover is installed in the lighting fixture.

12. With regard to Claims 21-22 and 25-26, Quin discloses the claimed invention as cited above, but does not specifically teach a color filter for filtering a color of light from the fluorescent lighting fixture such that the gasket further houses said color filter (re: Claim 20), the infrared filter being Night Vision Imaging Systems Green A-compatible (re: Claim 21) or Night Vision Imaging Systems Green B-compatible (re: Claim 22), and the color filter being a green (re: Claim 25) or yellow (re: Claim 26) filter.

Krashkevich teaches glasses for use as filters for infrared and other wavelengths, as well as being NVIS Green A, B, or yellow compatible [Figure 7], and discloses, "Suprisingly, the glasses of the invention possess excellent photopic transmission, on the order of 10% or greater at full rated voltage (i.e., at a color temperature of 2100-2150K) for Green A, and about 8-10% or greater for Green B, despite the inclusion of vanadium along with copper in the composition. Copper attenuates the near infrared red region by virtue of its broad ban infrared absorption, as well as visually coloring the glass blue. The addition of vanadium produces visible region absorptions which bias the chromaticity toward the green and aid in 600-650 nm region attenuation" [Column 3, Lines 14-25].

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the cover of Quin to incorporate the glass filters of Krashkevich in producing a color to increase aesthetics, as well as to incorporate the NVIS Green A, B, or yellow compatibility, as taught by Krashkevich, in order to facilitate night vision devices within aircraft [see Krashkevich: Column 1, Lines 8-30].

13. With regards to Claim 23, Quin in view of Krashkevich discloses the claimed invention as cited above, but does not specifically teach the gasket being an elastomeric material. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the gasket from an elastomeric material in order to facilitate easy removal/installation for the cover, and thus, facilitate replacement of the fluorescent lamps. In addition, it would have been obvious to incorporate the gasket out of an elastomeric material to ensure a good tight seal and prevent heat from escaping the lamp area towards the illumination direction. It has been held to be within general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

14. With regards to Claim 24, Quin in view of Krashkevich discloses the claimed invention as cited above, but does not specifically teach the protective layer being formed of polycarbonate. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the protective layer out of polycarbonate, which is commonly known as a durable and good impact resistant

material, to ensure protection or increase safety of the fluorescent lamp(s) during an accident. It has been held to be within general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

15. Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quin (U.S. Patent 3,103,156).

16. With regards to Claim 32, Quin discloses the claimed invention as cited above, but does not specifically teach the protective layer having a first protective layer on one side of the infrared filter layer and a second protective layer on another side of the infrared filter layer. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the second protective layer on the opposite side of the first protective layer in order to ensure greater protection to the infrared filter. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

17. With regards to Claim 33, Quin discloses the claimed invention as cited above, but does not specifically teach the protective layer being formed of polycarbonate. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the protective layer out of polycarbonate, which is commonly known as a durable and good impact resistant material, to ensure protection or increase safety of the fluorescent lamp(s) during an accident. It has been held to be

within general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

18. Claims 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quin (U.S. Patent 3,103,156) as applied to Claim 31 above, and further in view of Krashkevich (U.S. Patent 5,234,871).

19. With regard to Claims 34 and 38, Quin discloses the claimed invention as cited above, but does not specifically teach a color filter layer positioned between the infrared filter layer and the protective layer for filtering a color of light from the fluorescent lighting fixture (re: Claim 34), or provide the protective layer with a tint (re: Claim 38).

Krashkevich teaches glasses for use as filters for infrared and other wavelengths, disclosing, "Copper attenuates the near infrared red region by virtue of its broad band infrared absorption, as well as visually coloring the glass blue. The addition of vanadium produces visible region absorptions which bias the chromaticity toward the green and aid in 600-650 nm region attenuation" [Column 3, Lines 19-25].

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the cover of Quin to incorporate the glass filters/tinting of Krashkevich between the infrared filter layer and protective layer, so as to provide a more aesthetically pleasing illumination, as well as a preferred color for specific night time uses [see Krashkevich: Column 1, Lines 8-30].

20. With regards to Claim 35, Quin in view of Krashkevich discloses the claimed invention as cited above, but does not specifically teach the color filter layer having a first color filter layer on one side of the infrared filter layer and a second color filter layer

on another side of the infrared filter layer. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the second color filter layer on the opposite side of the first color filter layer in order to further alter the illumination wavelength to a desired preference, and thus enhance overall aesthetics. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

21. With regards to Claim 36, Quin in view of Krashkevich discloses the claimed invention as cited above, but does not specifically teach the protective layer having a first protective layer adjacent to the first color filter layer and a second protective layer adjacent the second color filter layer. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a first protective layer adjacent the first color filter layer and a second protective layer adjacent the second color filter layer in order to ensure greater protection to the infrared filter and color filters. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

22. With regards to Claim 37, Quin in view of Krashkevich discloses the claimed invention as cited above, but does not specifically teach the protective layer and the color filter layer being the same layer. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the protective layer and the color filter layer into the same layer, in order to save space and

facilitate easier removal of the cover/panel from the lighting fixture. It has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Han whose telephone number is (571) 272-2207. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason M Han
Examiner
Art Unit 2875

JMH (11/27/2006)

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